CHARLIE BAKER
Governor

KARYN POLITO
Lt. Governor

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CONTACT
Sarah Finlaw
sarah.finlaw@MassMail.State.MA.US

Baker-Polito Administration Announces Health Care Legislation Aimed at Addressing Key Challenges

Proposal Prioritizes Primary Care and Behavioral Health Within the Construct of the State's Health Care Benchmark

BOSTON – The Baker-Polito Administration today introduced comprehensive health care legislation to improve outcomes for patients, increase access to care and bring down costs. The reforms will promote access to behavioral health and primary care services and cut down the hidden costs that currently blindside consumers and impact the overall system. The legislation also holds drug companies accountable for excessive prices and unjustified price increases, and supports distressed community hospitals and community health centers.

In addition to the legislation, Governor Charlie Baker today signed an executive order forming a commission tasked with conducting a comprehensive study of the individual and small group insurance market, often referred to as the "merged market", to examine the underlying trends that are contributing to growing costs for individuals and small and mid-size employers. The administration also approved $15 million to be deposited into the Health Safety Net Trust Fund to support care provided to uninsured and underinsured patients by acute care hospitals and community health centers.

The legislation aims to invest in team-based approaches to treat the whole individual in order to improve health outcomes and decrease costs over time. Current internal and external data suggests that less than 15% of total medical expenses in Massachusetts are spent on primary care and outpatient behavioral health services combined.

"We need to prepare our health care system for the future, focus our efforts on achieving the best outcomes for patients and bring down costs. The current health care system is not incentivized to take proactive steps to address the challenges associated with supporting an aging population, individuals with a chronic illness, or those in need of behavioral health services," **said Governor Baker**. "This

legislation supports holistic approaches to care, provides consumers and employers with affordable care options, promotes behavioral health parity, and ensures everyone has access to the services they need."

"The Commonwealth is one of the healthiest states in the nation with the highest percentage of insured individuals, in part due to our strong and innovative health care industry; however, we continue to be one of the most expensive states for health care," **said Lieutenant Governor Polito**. "This legislation aims to protect consumers and reduce their out-of-pocket costs, and further support community hospitals and health centers which play a critical role in delivering quality, affordable care to some our highest-need communities."

"For far too long, primary and behavioral health care has not been at the forefront of our health care system. While we know that changing the narrative will take time, we are committed to engaging in a multi-year, multi-pronged approach to create a cohesive system of behavioral health care and strong primary care in the Commonwealth," **said HHS Secretary Marylou Sudders**. "We took a hard look at our current system and asked what we had to do as a state to incentivize payers and providers to invest in these services and improve access to care. Today's legislative action is a significant step, and over the next several months we will be rolling out additional behavioral health initiatives that support our overall goal of achieving true parity."

The legislation includes reforms in five major areas:

- Prioritizing behavioral health and primary care
- Managing health care cost drivers to protect consumers
- Improving access to high-quality, coordinated care
- Stabilizing distressed community hospitals and health centers
- Promoting insurance market reforms

Prioritizing behavioral health and primary care within the cost growth benchmark

Since January 2015, the Baker-Polito Administration has invested $1.9 billion in behavioral health across the spectrum of care. Even as the administration has made important strides in the integration of behavioral and physical health and increased treatment capacity, deep-rooted structural challenges continue to exist. Consumers consistently report long waits for appointments, lack of treatment available at the right time and at the right place and difficulty finding providers who take insurance.

Additionally, the system continues to underinvest in primary care despite the known link to better population health and lower spending. By definition, primary care focuses on early detection and treatment and is among the most cost-effective functions of our health care system.

The legislation targets those challenges by prioritizing investments in behavioral and primary care and **establishing a spending target.**

- Providers and insurers, including MassHealth, will be required to increase spending on behavioral health and primary care by 30% over three years within the construct of the state's healthcare benchmark.
- Calendar year 2019 spending will serve as the baseline, and providers and insurers will be measured on their performance beginning in calendar year 2023.
- The legislation does not suggest a standard pathway for providers and insurers to achieve the target.

- Providers and insurers will be required to report their progress on an annual basis through the Center for Health Information Analysis' (CHIA) and Health Policy Commission's (HPC).
- If the target is not achieved, providers and insurers will be referred by CHIA to the HPC and may be subject to a performance improvement plan which may require them to identify strategies and opportunities to increase investments in primary care and behavioral health.

In addition to promoting increased spending in behavioral and primary care, the legislation complements the administration's broader efforts to create a cohesive behavioral health care system by developing the behavioral health workforce and ensuring consumers have access to accurate and updated information by:

- **Encouraging behavioral health practitioners to accept insurance**
  - Requires insurers, including MassHealth, to use a standardized credentialing form so providers only need to complete one application.
  - Increases payment rates by establishing a "bottom line" for certain services based on the in-network rate for comparable medical/physical services.
  - Requires insurers to report on their out-of-network behavioral health utilization.
- **Promoting timely access to appropriate behavioral health treatment**
  - Requires insurers to maintain accurate provider directories and update them on a quarterly basis. It also requires providers to update any changes in status (e.g. no longer accepting new patients).
  - Prohibits payers from denying coverage or imposing additional costs for same-day behavioral health and certain medical visits
  - Requires acute care hospitals to maintain clinical capacity to provide or arrange for the evaluation, stabilization and referral of patients with behavioral health conditions in emergency departments
- **Develop behavioral health professional workforce**
  - Requires insurers to reimburse non-licensed behavioral health professionals in training working in clinical settings.
  - Establishes a Board of Registration of Recovery Coaches, per the recommendations of the Recovery Coach Commission, to credential and standardize the recovery coach position to promote insurance reimbursement.

Managing health care cost drivers to protect consumers

Since 2009, total healthcare spending growth in Massachusetts has been below the national rate; however, health care spending is still high and consumers continue to pay more for health care even when they have coverage. The Center for Health Information and Analysis (CHIA)'s recent annual report found that total health care expenditures grew from $58.8 billion in 2017 to $60.9 billion in 2018, an increase of 3.1%. Even with a moderate overall growth rate, the burden of health care costs on Massachusetts employers and residents continues to grow. Over the past two years, growth in consumer out-of-pocket costs and premiums has outpaced inflation and wage growth. For every additional dollar earned by Massachusetts families between 2016 and 2018, 48 cents went to health care.

The legislation **protects consumers and reduces out-of-pocket costs** by:

- **Prohibiting surprise billing for emergency and unplanned services rendered by an out of network provider at an in-network facility**. For example, an individual may receive a surprise

medical bill after going to the emergency room for a broken arm and getting an X-ray by a radiologist who, unbeknownst to the consumer, is out-of-network.

- **Creating limits for when a hospital can charge an extra fee** (known as a facility fee) **for services delivered at hospital outpatient department**. Patients may go to a hospital outpatient department to see a specialist or have a day surgery that does not require an inpatient stay. Statistics show that prices for the same service can be 30-60% more in hospital outpatient departments than in a doctor's office. The limits are focused on the proximity of the clinic to the hospital's main campus and fees are prohibited altogether for certain services like an X-ray or MRI delivered in an outpatient setting.
- Requiring that **pharmacies inform individuals about their lowest out-of-pocket cost options for prescription drugs when they pick-up a prescription.**

The legislation also **provides the Commonwealth with additional tools to hold pharmaceutical manufacturers and middlemen accountable for growing prescription drug costs.**

High drug costs that are new to the market with little competition continue to drive health care spending, even after rebates. The Baker-Polito Administration has already taken historic measures to address high drug costs through the state's Medicaid program. Provisions approved in the FY20 budget authorized MassHealth to directly negotiate with drug manufacturers and engage in a public process when a deal cannot be reached while maintaining full coverage for members. However, no system targeting high cost drugs currently exists in the commercial market. To address this, the legislation **creates a multi-pronged approach for increasing accountability for drug manufacturers**:

- Subjects manufacturers of new, high-cost drugs to HPC's accountability process (cost more than $50,000/per person per year) for further review, similar to the processes established for insurers and providers.
- Imposes a penalty on manufacturers that increase the cost of drugs exponentially which are sold or distributed in the Commonwealth. The penalty will be imposed if a drug is increased greater than the consumer price index (CPI) plus two percent. The penalty would be equal to 80% of the increase amount in excess of CPI +2% for drugs sold or distributed in the Commonwealth.
    - For example, a drug may cost $1,000 on 12/20/20 and on 12/20/21 it costs $1,020. If the CPI is set at 2% then the drug could grow 4% (CPI + 2%) without being penalized. In this scenario the manufacturer would not be penalized because the price increase does not exceed 4. However, if the drug cost $1,200 on 12/20/21 the manufacturer would be penalized because it exceeds the 4% growth. The Commonwealth would then collect the 80% on the difference times the amount of units sold or distributed. In this scenario, the difference is $161 meaning the penalty would be $129 (80%) per unit. If the manufacturer sold 30,000 units then the Commonwealth would penalize the company for $3.8 million.

Additionally, the legislation aims to increase **state oversight of pharmacy benefit managers** (PBM). PBMs manage prescription drug benefits for many health plans and negotiate prices and rebates with manufacturers and payments to pharmacies. Their practices have increasingly raised concerns because they aren't transparent and may contribute to high drug costs. As part of reforms included in the FY20 budget, the Baker-Polito Administration implemented a new requirement for PBMs to be transparent about their pricing and to limit PBM margins under contracts with MassHealth, MCOs and Accountable care organizations (ACOs), which is projected to save $10 million in the first year. However,

Massachusetts currently has no authority or oversight of PBMs or their compensation and as a result cannot hold PBMs accountable or compel them to report data related to revenues. The legislation:

- Establishes a PBM certification requirement within the Division of Insurance.
- Requires PBMs to report financial data to CHIA from manufacturers and provider payments to increase transparency.

The legislation also **strengthens the Commonwealth's ability to hold insurers and providers accountable for growing health care costs**.

- Chapter 224 of the Acts of 2012 is designed to health care spending growth in line with growth in the state's overall economy by establishing a statewide target for the rate of growth of total health care expenditures, known as the "health care cost benchmark", which is set by the Health Policy Commission.
- The legislation allows the HPC to impose financial penalties on an entity that exceeds the benchmark in lieu of a performance improvement plan. Funds collected from the penalties will be directed to a redesigned Community Hospital and Health Center Investment Trust Fund.

Improving access to high-quality, coordinated care

The growth of retail clinics and urgent care centers, both in Massachusetts and around the nation, represents an effort to provide alternative, convenient points of access to health care beyond the traditional hours and sites of physician offices, community health centers, and hospitals. Research has shown that greater access to these sites holds the potential to reduce avoidable and costlier emergency department visits, and utilization continues to grow.

There is currently no clear definition of urgent care services in Massachusetts, which can lead to confusion among insurers and patients, and differing oversight. Additionally, many urgent care clinics do not accept MassHealth patients, leading to disparities in care. To **define urgent care and require broader insurance coverage** the legislation:

- Defines urgent care services as those that are episodic in nature, generally provided on a walk-in basis, and available to the general public.
- Requires any entity to be licensed as a clinic if it provides urgent care services, has "urgent care" in their name or suggests that urgent care services are provided.
- Requires that in order an entity to be licensed as an urgent care clinic they must accept MassHealth members, provide behavioral health services, and meet certain standards related to primary care.

Similar access challenges exist around telemedicine. Telemedicine supports efforts to significantly improve the quality of health care by increasing accessibility and efficiency through reducing the need to travel. However, patient use of telemedicine remains low. There is currently no definition of the medical services that can be provided via telehealth services. In addition, insurance coverage of telehealth services varies by insurer which has stalled widespread adoption. The legislation aims to **improve access to telemedicine** by:

- Establishing a regulatory framework for telehealth services.
- Requiring insurers to cover certain telehealth services if same service is covered in-person. Providers cannot deny coverage based on the sole fact that the service is provided via telemedicine to ensure coverage parity.

The Commonwealth has some of the most restrictive practice requirements governing mid-level practitioners including nurse practitioners among the New England states. Studies have shown that states that have changed their regulations to allow full practice authority for nurse practitioners, like California, saw increases in primary care utilization and decreases in emergency department use. Additionally, Massachusetts is one of fewer than 20 states that do not participate in the Nurse Licensure Compact which allows nurses licensed in other states to work in Massachusetts without the need to secure a new license here. The legislation **improves the scope of practice standards for practitioners** and creates additional access to services by:

- Allowing advanced Practice Registered Nurses (APRN), including psychiatric nurses, to practice at the top of their license. The legislation newly allows nurse practitioners and psychiatric nurse mental health clinical specialists to independently prescribe without a supervising physician.
- Creates a mid-level dental provider position to provide preventive and basic dental services.
- Aligns practice standards on optometrists and podiatrists with other states. Allows optometrists to treat glaucoma and other ocular conditions, and to prescribe certain medications, and expands podiatrists' existing practice scope to include diagnosis and treatment of ailments of the lower leg.
- Authorizes Massachusetts to join the Nurse Licensure Compact to allow nurses licensed in other Compact states to work in in the Commonwealth and vice versa.

Stabilizing distressed community hospitals and health centers

Community hospitals and health centers play a critical role in our health care system, delivering quality, affordable care to some of the highest-need communities. In addition to the $15 million deposit by the Administration into the Health Safety Net Trust Fund, the legislation provides **additional funding to community hospitals and health centers through a redesigned Community Hospital and Health Center Investment Trust Fund**. The trust is currently funded through annual transfers from CHIA. The legislation proposes to:

- Specifically target the funding to community hospitals and health centers in need of extra support.
- In addition to funding from CHIA, revenues collected through the drug manufacturer penalty and performance improvement plan penalties will go directly into the fund.

Promoting insurance market reforms

Commercial health care coverage for businesses, particularly for small and mid-size employers, continues to become more expensive year over year. CHIA's 2019 annual report found that between 2017 and 2018 fully-insured premiums increased by 5.6% overall to $509 million per member per month, and Massachusetts employees directly paid 26-30% of their total premium costs in 2018. The legislation:

- **Ensures that individuals and small employers have equitable access to all available health plan offerings/products, including tiered and limited network plans**.

In addition to this legislation, Governor Baker today also issued an executive order to create a **commission tasked with conducting a comprehensive study of the individual and small group insurance market** to better understand the impact of certain policies on employers' and employees' health care costs. The commission will be chaired by the Commissioner of Insurance, will include payer, employer, broker, and consumer representatives and is charged with reporting recommendations by April 30, 2020.

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